

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-08-90030

BEFORE

Torruella, Boudin, and Howard, Circuit Judges
McAuliffe and Woodcock, District Judges

ORDER

ENTERED: AUGUST 3, 2009

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaint of judicial misconduct, under 28 U.S.C. § 351(a), against a district judge. The petitioner originally alleged that the judge exhibited bias by improperly delaying ruling on matters before the court, neglecting to adequately read and consider the pleadings, and by issuing erroneous rulings while presiding over the petitioner's two civil cases.

The petitioner asserted that, in his first case, which the petitioner filed against state court judges who presided over the petitioner's custody proceedings, the judge "obstructed justice [in order] to protect his 'brother' judges from being held accountable for their misconduct." The petitioner contended that, in order to protect the judicial defendants, the judge took no action in the case for the first 22 months it was filed. The petitioner similarly alleged that the judge improperly delayed ruling on the defendants' motion to dismiss filed in the petitioner's other case, challenging his discharge from the town's public schools.

The petitioner next alleged that the judge neglected to read the pleadings in the first case, as evidenced by the court's order allowing the petitioner's motion for a ten-day extension that he had filed a number of months earlier. The petitioner concluded that the judge handled the case so as to "obstruct justice and deny [the petitioner] his right to have [the] case heard before a jury. . . ."

In subsequently filed materials, the petitioner alleged that the judge retaliated against him for the filing of the misconduct complaint by dismissing both of his cases six weeks after the complaint was filed. Stating that the judge should have recused himself upon the filing of the misconduct complaint, the petitioner concluded that Judge Woodlock violated Canons 1, 2 and 3 of the Code of Conduct for United States Judges by failing to enforce "high standards of conduct, . . . carry out [his] responsibilities with integrity [and] impartiality, [and] dispose promptly of the business of the court."

Chief Judge Lynch dismissed the complaint. The Chief Judge determined that the reviewed record--consisting of the misconduct complaint, the dockets of the cases at issue, and the relevant pleadings and court orders--failed to support the petitioner's charges. Chief Judge Lynch recounted the following relevant chronology. Approximately one month after the petitioner filed his first case, the defendants filed a motion to dismiss. Several months later, the court held a conference on this motion, at which the court ordered the defendants to produce copies of the relevant state court documents and took the defendants' motion to dismiss under advisement.

The defendants filed the requisite documents and the petitioner filed the motion cited in his complaint requesting a ten-day extension in which to file a pleading. Approximately five

months later, the complainant filed a letter inquiring into the status of the case, and, after several more months, the judge issued an electronic order allowing the petitioner's motion for more time.

Two months later, the petitioner filed a motion to expedite the trial, and filed the other case, alleging that he was unlawfully discharged from the public school at which he had been employed. The defendants moved to dismiss this proceeding, and the court held a conference on both cases, at which it ordered the parties to file a report on the custody matter, stayed discovery in the employment case, and set a hearing.

At the scheduled hearing, the judge denied the petitioner's motion to amend the complaint in the custody case, ordered briefs be filed in the employment case, and took remaining matters under advisement. During the following two months, the parties filed additional miscellaneous motions and memoranda in both cases, including motions to dismiss, expedite the trial, amend the complaint, and for extensions of time.

In the fall of 2008, the judge issued lengthy orders dismissing both cases. As to the custody matter, the court determined that the Rooker-Feldman doctrine limited the court's jurisdiction to review the petitioner's challenges, that the claims for monetary damages were barred by judicial immunity, and that the abstention doctrine prevented the court from awarding equitable relief. As to the employment case, the judge determined that the petitioner had failed to state a valid constitutional claim against the defendants and that it would not exercise supplemental jurisdiction over the remaining state law claims. The petitioner then filed motions for reconsideration of the court's orders of dismissal, both of which were summarily denied.

Based upon her review of these materials, Chief Judge Lynch found no evidence of any improper judicial motivation. Chief Judge Lynch observed that the judge actively presided over

the proceedings and that his case management was neither out of the ordinary nor indicative of misconduct. She further noted the thoroughness of the court's orders of dismissal, as well as the fact that the judge did not "ignore" the petitioner's motions for an expedited trial, but ruled on them in conjunction with the orders of dismissal. As the complaint and the reviewed record provided no evidence of bias, neglect or improper motive, the complaint was dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 11(c)(1)(D).

Insofar as the petitioner disputed the substance of the courts' orders of dismissal, as well as other orders issued by the court, the complaint also was dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 3(h)(3)(A), and Rule 11(c)(1)(B).

Finally, Chief Judge Lynch explained that the filing of a misconduct complaint did not, under the misconduct statute and governing rules, require the judge's recusal. Nor, the Chief Judge observed, did the petitioner present any independent basis for recusal, or establish a violation of the Code of Conduct for United States Judges. These charges were, therefore, also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A).

The petition for review reiterates the charges presented in the original complaint and adds that the Chief Judge's order of dismissal "is more documented proof that judges at every level are more concerned with covering up and excusing judicial misconduct than in holding their fellow judges accountable." The petitioner states that the judge's misconduct "can hardly be disputed, except among judges with an agenda to claim otherwise," and that Chief Judge Lynch "creatively

'spun' the facts . . . to protect one of *her* First Circuit judges . . . (emphasis in original)." The petitioner concludes that the Chief Judge is "as guilty as [the district judge] of defying . . . [the] duty to establish, maintain, and enforce high standards of conduct."

The petitioner first reiterates the allegations of neglect and delay, contending that the judge only held a single hearing during the pendency of the first case. The petitioner states that the additional hearings reflected on the docket "were purely for show," and that the judge's 22-month delay in ruling on the defendant's motion to dismiss was egregious. The petitioner restates the claim that the judge failed to read pleadings, as evidenced by the court's allowance of the petitioner's motion for a 10-day extension of time nine months after it had been filed.

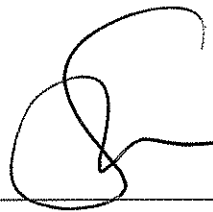
The petitioner next reiterates his disagreement with the court's dismissal of both of his cases, disputing Chief Judge Lynch's determination that the court's decision in the first case reflected an "extensive analysis" of the applicable law. Finally, the petitioner restates the claims that he was wrongfully denied a jury trial, and that the judge's failure to recuse himself constituted misconduct. The petitioner concludes that "[t]here is not a jury on the planet that would have ruled against [him] with the evidence and testimony that [he] was prepared to present in BOTH of the cases" (emphasis in original), and that "[t]here is nothing more frightening than to know that the most corrupt person in the courtroom is the one wearing the black robe."

The petition for review is without merit. The petitioner provides no information supporting his claims of bias, neglect and delay, beyond those that were thoroughly addressed and dispelled by Chief Judge Lynch. Nor does the petitioner present any basis for questioning the Chief Judge's review of the complaint. The petitioner relies exclusively upon his dissatisfaction with the substance of the court's decisions and with the duration of the case as

purported evidence of judicial bias and malice. As the Chief Judge's review of the cases demonstrated, neither the court's orders nor its management of the proceedings was indicative of bias or other wrongdoing. To the contrary, the reviewed record reflected the judge's comprehensive consideration of the petitioner's claims. Further, the court's management of the case does not suggest the type of habitual or egregious delay that could rise to the level of judicial misconduct. See Rules of Judicial Misconduct, Rule 3(h)(3)(b). Accordingly, the complaint was appropriately dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii).

Insofar as the complaint was also based exclusively on the petitioner's disagreement with the court's rulings, it was also aptly dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). Nor, as the Chief Judge explained, was the judge under any obligation to recuse himself upon the filing of the misconduct complaint. See 28 U.S.C. § 352(b)(1)(A)(i).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-08-90030 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).

A handwritten signature in black ink, appearing to be 'SG', is written above a horizontal line.

Susan Goldberg, Acting Secretary